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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/800,176

03/12/2004

Anne Farbrot

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8607

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06/28/2006

BUCHANAN INGERSOLL PC
(INCLUDING BURNS, DOANE, SWECKER & MATHIS)
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EXAMINER

BOGART, MICHAEL G

ART UNIT

PAPER NUMBER

3761

DATE MAILED: 06/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/800,176	FARBROT ET AL.	
	Examiner	Art Unit	
	Michael G. Bogart	3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>6/23/04; 11/21/05</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Information Disclosure Statement

The information disclosure statement filed 08 September 2004 fails to comply with 37 CFR 1.98(a)(1), which requires the following: (1) a list of all patents, publications, applications, or other information submitted for consideration by the Office; (2) U.S. patents and U.S. patent application publications listed in a section separately from citations of other documents; (3) the application number of the application in which the information disclosure statement is being submitted on each page of the list; (4) a column that provides a blank space next to each document to be considered, for the examiner's initials; and (5) a heading that clearly indicates that the list is an information disclosure statement. The information disclosure statement has been placed in the application file, but the information referred to therein has not been considered.

Claim Objections

Claim 7 is objected to because of the following informalities:

Claim 7 recites the limitation "the agent" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 7 recites the limitation "the three-dimensional polysiloxane network" in lines 2 and 3. There is insufficient antecedent basis for this limitation in the claim.

Appropriate correction is required.

Claim Rejections – 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 6-8, 11, 12, 14-16 and 18 are rejected under 35 U.S.C. § 102(b) as being anticipated by Roe *et al.* (US 5,635,191 A; hereinafter “Roe”).

Regarding claims 1, 6 and 15, Roe teaches an absorbent article (50) having a topsheet (520) having a polysiloxane gel/lotion/emollient that functions as a carrier for an additive such as a deodorant. (see abstract; col. 18, lines 30-40).

Regarding claim 7, Roe teaches a swelling agent (hydrophilic surfactant, bonds with water). This is a functional limitation. Apparatus claims must be structurally distinguishable over the prior art.

Regarding claim 12, water is activated by diffusion or pressure (col. 18, lines 30-40).

Regarding claims 8 and 11, Roe teaches that the polysiloxane may have a cyclic, or cross-linked structure (col. 11, lines 43-67). This would inherently produce a net or latticed structure.

Regarding claim 14, Roe teaches a glue mixed with the polysiloxane (immobilizing agent).

Regarding claims 16 and 18, Roe teaches a method of providing an additive to an absorbent article such as an incontinence device, including the steps of providing a polysiloxane gel to an absorbent article such as a diaper (col. 1, lines 7-15; col. 18, line 30-col. 20, line 11).

Claim Rejections – 35 USC § 103

The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. § 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. § 103(c) and potential 35 U.S.C. § 102(e), (f) or (g) prior art under 35 U.S.C. § 103(a).

Claims 2-4, 9 and 10 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Roe.

Roe does not expressly disclose the specific size of the area of polysiloxane or the dimensions of the meshes.

Mere changes in the relative ^{*dimensions*} of elements is not sufficient to patentably distinguish an invention over the prior art. See *Gardner v. TEC Systems, Inc.*, 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), *cert. denied*, 469 U.S. 830, 225 USPQ 232 (1984), the Federal Circuit held that, where the only difference between the prior art and the claims was a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions

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would not perform differently than the prior art device, the claimed device was not patentably distinct from the prior art device.

Claims 5 and 17 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Roe as applied to claims 1, 6, 15, 16 and 18 above, and further in view of Runeman *et al.* (US 6,187,990 B1; hereinafter “Runeman”).

Roe does not teach lactobacilli as an additive.

Runeman teaches an absorbent article that uses lactobacilli as an additive to prevent unpleasant odors (col. 4, lines 14-35).

At the time of the invention, it would have been obvious to one of ordinary skill in the art to select the lactobacilli additive of Runeman in the absorbent article of Roe in order to provide an effective odor reducing agent.

Claim 13 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Roe as applied to claims 1, 6, 12, 15, 16 and 18 above, and further in view of Muckenfuhs *et al.* (US 4,934,535; hereinafter “Muckenfuhs”).

Roe does not teach a detachable protective layer.

Muckenfuhs teaches a package/covering (10) for a diaper.

At the time of the invention, it would have been obvious to one of ordinary skill in the art to employ the package of Muckenfuhs to contain the diaper of Roe for retail sale.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Bogart whose telephone number is (571) 272-4933.

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In the event the examiner is not available, the Examiner's supervisor, Tatyana Zalukaeva may be reached at phone number (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300 for formal communications. For informal communications, the direct fax to the Examiner is (571) 273-4933.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-3700.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Michael Bogart
19 June 2006

TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER
